

REMARKS

This paper is filed in response to the Office Action mailed on November 29, 2007. Currently, Claims 1-15, 19-21, 23-33, and 38-42 are pending in the application. Claims 1-15, 19-21, 23-33, and 38-42 have been examined and stand rejected. Of these, Claims 3, 8, 12-14, 16-18, 22, 24-26, 32, 33 and 38-42 have been canceled without prejudice. Accordingly, reconsideration of Claims 1-2, 4-7, 9-11, 15, 19-21, 23, and 27-31 is respectfully requested.

Applicants thank the Examiner for her time during the in-person interview on April 14, 2008. The amendments requested above correspond to the amendments to the claims presented during that interview. Applicants appreciate the Examiner's indication that the amendments overcome the outstanding rejections based on Kelly and Mahon as described below in more detail.

Also transmitted herewith are copies of the ten photographs that were presented to the Examiner during the April 14, 2008 interview.

During the interview, the Examiner requested applicants to point out in their formal response the portions of the specification that describe frozen seafood chunks being modified, coated, and formed in accordance with steps (1), (3), and (4) recited in Claim 1. Regarding the frozen seafood chunks recited in step (1), blocks 206 and 208 of FIGURE 2 along with the description reproduced below from page 10, lines 18-23, describe obtaining frozen seafood portions and modifying their surfaces.

Throughout the blending and forming process, blocks 206 through 222, it is preferred that the temperature of the seafood portions does not exceed 28°F. A target temperature for mixing and forming the product is about 24°F to about 26°F. While in a frozen condition, at the temperatures described, the seafood chunks are less prone to disintegrate into pieces too small for the binder to effectively coat the surfaces of the smaller pieces.

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Regarding the frozen seafood portions of step (3), the above-quoted portion from page 10 of the specification refers to block 216 where binder is added to the frozen seafood portions. Regarding the frozen seafood portions of step (4), the above-quoted portion from page 10 of the specification refers to block 222 where the surface-modified frozen seafood portions are formed into a restructured product. Each of the passages noted above provide support for the seafood chunks being frozen during steps (1), (3), and (4).

During the interview, the Examiner also asked applicants to identify portions of the specification that reference "chunks." Applicants direct the Examiner's attention to page 7, lines 2-5, wherein it is described that hydroflaking is used to produce "chunks" of seafood. Other passages of the specification that refer to "chunks" include page 4, line 13, and page 10, line 21.

The Rejection of Claims 1-5, 7, 9-15, 19-21, 23-29, 32, 33, and 38-42 Under 35 U.S.C. § 103(a)

Claims 1-5, 7, 9-15, 19-21, 23-29, 32, 33, and 38-42 Under 35 U.S.C. § 103(a) as Being Unpatentable Over U.S. Patent No. 3,897,573 (Kelly) in View of U.S. Patent No. 3,036,923 (Mahon). Claims 12-14, 24-26, 32-33, and 38-42 have been canceled. Accordingly, the rejection of these claims over Kelly in view of Mahon is moot.

Claim 1

Claim 1 has been amended to more particularly describe one embodiment. Claim 1 relates to a method for making a restructured seafood product. The method comprises modifying the surfaces of *frozen* seafood chunks by steps comprising, obtaining frozen seafood chunks from a selected seafood species; and mixing the *frozen seafood chunks* with *1% by weight or less of salt* for a sufficient time of no more than 10 minutes to produce surface-modified *frozen* seafood chunks. The method comprises preparing a binder by steps comprising, obtaining flesh of a similar seafood species and mixing the flesh with at least salt to produce a binder. The method

includes coating the modified surfaces of the frozen seafood chunks with the binder and forming the binder-coated, surface-modified *frozen* seafood chunks into a restructured product, the product including frozen seafood chunks bound with the binder, *1% by weight or less of salt* and less than 10% by weight of binder.

The Prior Art Does Not Disclose Nor Suggest Frozen Seafood Chunks

Kelly, alone or in combination with Mahon, does not disclose nor suggest the treatment of frozen seafood chunks with salt followed by mixing with a binder. Kelly discloses the production of integral molded fish blocks prepared by salting fillets of the fish, coating the salted fillets with a binder and molding the binder coated fillets to form blocks. See for example, the Abstract and Col. 2, lines 3-13. Kelly only discloses freezing the blocks after they have been molded. See for example, Col. 4, lines 43-47. Claim 1 has the advantage that the frozen chunks of seafood can be bound together without having to thaw the seafood pieces, which would result in loss of time and lead to drip and loss of water from the seafood. (See the application at page 5, lines 30-31.)

The Prior Art Does Not Disclose Nor Suggest the Claimed Process Conditions

Claim 1 recites mixing the frozen seafood chunks with 1% or less by weight salt and forming a restructured product that includes 1% by weight or less of salt.

Kelly does not disclose mixing frozen seafood chunks with 1% by weight or less of salt or a restructured product that includes 1% by weight or less salt as recited in amended Claim 1. Kelly discloses the treatment of fish pieces with amounts of sodium chloride in excess of 1% by weight that are sufficient to ensure that after the initial salting, the fish pieces contain not more than 20%, usually from 3%-20% and, preferably, from 3%-10% salt, expressed on a wet weight basis. (Col. 2, lines 26-31.)

The Examiner's Action asserts that it would have been obvious to minimize the salt used in Kelly in order to create a low salt alternative to the Kelly fish product. In order for the Examiner to establish a *prima facie* case of obviousness, the Examiner's Action must include a finding that the results of the modification would have been predictable. Applicants assert that the results of reducing the salt content in the Kelly process end product by 300% or more would not have produced results that would be predictable to one of ordinary skill; i.e., given the large reduction in the amount of salt proposed in the Examiner's Action, one of ordinary skill would not be able to predict the effect of such large salt reduction on the process or product described in Kelly. For these reasons, the modification of Kelly to reduce by 300% or more the amount of salt used as proposed in the Examiner's Action does not render obvious the subject matter of independent Claim 1.

Accordingly, for reasons given above, the withdrawal of the rejection of independent Claim 1 is respectfully requested. Because Claims 2, 4-7, 9-11, 15, 19-21, 23, and 27-31 depend from Claim 1 and, therefore, include all the limitations of the claim from which they depend, the withdrawal of the rejection of these claims is also respectfully requested.

The Rejection of Claims 30 and 31 Under 35 U.S.C. § 103(a)

Claims 30 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,897,573 (Kelly).

Claim 30 as amended relates to a method of preparing a restructured seafood product using a plurality of frozen seafood chunks that *have not been modified on the surfaces by a phosphate or salt*. Claim 30 is an alternative to the method of Claim 1. Unlike Claim 1, the seafood chunks are not pre-treated with salt or phosphate before combining with the binder. This alternative method is described in the application on page 9, lines 9-14. The claimed method however, recites adding a binder containing at least salt and, mixing the seafood chunks with the

binder. The claimed method omits treating the seafood chunks with salt or phosphate because the binder contains enough salt to create the binding sites on the seafood. Kelly discloses first treating the fish fillets with salt followed by mixing the salted fish fillets with a special binder (Col. 3, lines 19-26). Accordingly, Kelly does not disclose omitting the salt treatment step. Furthermore, Claim 30 recites frozen seafood chunks and results in a restructured seafood product having 1% or less by weight of salt, which as discussed previously are not disclosed nor suggested by Kelly or Mahon.

Accordingly, the withdrawal of the rejection of Claims 30 and 31 is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, applicants submit that all pending claims are in condition for allowance. If the Examiner has any further questions or comments, the Examiner is invited to contact the applicants' attorney at the number provided below.

Respectfully submitted,

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